

Serial No. 10/642,850

Docket No.: KCC-15,611.1

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the following remarks. Currently, Claims 1-7, 9-20, 22-30, 32-38, and 40 are pending.

Applicants' claimed invention is directed to an absorbent garment particularly suitable for swim applications. The garment has a composite structure including an outer cover and a liquid-permeable body side liner with an absorbent assembly between the outer cover and the body side liner. Applicants' claimed invention also includes an additional structure made from a continuous mesh liner which is joined to the perimeter of the composite structure and is able to conform to the user's body while allowing sand to pass through the mesh liner. Passing sand from within the absorbent article and away from the skin reduces possible irritation. Mesh is an open network as defined on page 11, lines 13-17. The mesh liner also functions to hold or contain fecal matter since the mesh liner is substantially impermeable to larger bowel movement material (*see* page 5, lines 1-8).

**Claim Rejections - 35 U.S.C. §102**

The rejection of Claims 1-3, 7-12, 14-20, 22-29, 32-37, and 40 under 35 U.S.C. §102(b) as being anticipated by Allen et al. (U.S. Patent No. 5,037,416, hereinafter "Allen") is respectfully traversed.

Allen discloses a diaper with an elastically extensible topsheet in combination with a backsheet and an absorbent core. On page 2 of the Office Action, the Examiner states that the reference number 12 of Allen corresponds to a continuous mesh liner. Applicants respectfully disagree. Reference number 12 clearly depicts a topsheet, functionally equivalent to Applicants' recited body side liner.

Allen describes the function of the topsheet as follows:

The topsheet 12 prevents contact of the absorbent core 18 and liquids therein with the skin of the wearer. The topsheet 12 is liquid pervious, permitting liquids, particularly urine, to readily penetrate therethrough. As used herein, the term "topsheet" refers to any liquid pervious facing which contacts the skin of the wearer while the diaper

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10 is worn and **prevents substantial contact** of the core 18 with the skin of the wearer. (column 6, lines 14-22, emphasis added).

In Applicants' claimed invention, the function of isolating the absorbent core from skin is performed by Applicants' body side liner, which is part of the composite structure and not a separate mesh liner. Allen fails to disclose or suggest an additional continuous mesh liner or continuous liquid-permeable liner that is permeable to sand and attached to the composite structure adjacent to the topsheet.

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Allen fails to disclose each and every element or limitation of Applicants' independent Claims 1, 20, 27, and 34.

While in certain embodiments the topsheet of Allen may include two layers 13a and 13b, these two layers are adhesively joined to form a "unitary laminate" (column 9, lines 19-29). Consequently, neither of these layers is equivalent to Applicants' recited continuous mesh liner or continuous liquid-permeable liner, particularly since Applicants' claimed garment requires that the continuous mesh or liquid-permeable liner be coextensive with the composite structure and attached to the composite structure along the perimeter of the composite structure and unattached to the composite structure in the central region of the composite structure. Instead, Allen's laminate 13 forms the topsheet 12, which is *part of the composite structure*.

In other embodiments, the topsheet of Allen includes an aperture or passageway 21 that is sized to allow solid fecal material to enter void space 28 between topsheet 12 and absorbent core 18 (*see* column 12, lines 33-50). This single-hole embodiment is completely opposite Applicants' claimed continuous mesh liner. More particularly, Applicants' mesh liner holds fecal matter against the wearer's body while allowing sand to pass through the mesh liner to the body side liner, whereas Allen's aperture or passageway 21 allows both fecal matter and sand to pass directly to the absorbent core.

In summary, Allen and Applicants' inventions are structurally different since Allen lacks an additional mesh liner. Allen is also functionally different than Applicants' invention. Allen seeks to isolate fecal material from the user by passing it through the aperture in the top sheet and trapping it in the void space. In contrast,

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Applicants' mesh layer is substantially impermeable to larger bowel movement material and holds the bowel movement in contact with the user so it does not exit with the swimming water and create a sanitation problem, as discussed on page 2, lines 8-12.

For at least the reasons presented above, Applicants respectfully submit that Claims 1, 20, 27, and 34 are not anticipated by Allen. Since Claims 2, 3, 7-12, and 14-19 depend from Claim 1; Claims 22-26 depend from Claim 20; Claims 28, 29, 32, and 33 depend from Claim 27; and Claims 35-37 and 40 depend from Claim 34, these claims are also not anticipated by Allen. Thus, Applicants respectfully request withdrawal of this rejection.

#### Claim Rejections - 35 U.S.C. §103

##### A. Allen in view of Freeland

The rejection of Claims 4 and 6 under 35 U.S.C. §103(a) as being unpatentable over Allen in view of Freeland (U.S. Patent No. 4,990,147) is respectfully traversed.

Freeland fails to overcome the deficiencies of Allen to arrive at Applicants' claimed absorbent garment having a continuous mesh liner. Like Allen, Freeland discloses a garment having a backsheet, a topsheet and an absorbent core, but fails to disclose or suggest an additional mesh liner to contain larger bowel movement material. The structure and function of Freeland is essentially the same as that of Allen, which seeks to "obviate the aforementioned problems related to fecal material reposing against the skin of the wearer." (column 1, lines 41-43).

One skilled in the art would not be motivated by or have an expectation of success based on the teaching of Freeland to modify Allen to arrive at Applicants' claimed invention. More particularly, both Allen and Freeland seek to separate fecal material from the skin of the user by inserting a hole in the topsheet, thereby allowing fecal matter to pass through the topsheet and onto an absorbent core. In contrast, Applicants' mesh liner holds the larger fecal material *against* the skin and does not allow it to exit into the swimming water. Thus, Allen and Freeland both *teach away* from Applicants' claimed invention.

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For at least the reasons presented above, Applicants respectfully submit that Claims 4 and 6 are not unpatentable over Allen in view of Freeland. Thus, Applicants respectfully request withdrawal of this rejection.

**B. Allen in view of Mizutani**

The rejection of Claims 5, 30, and 38 under 35 U.S.C. §103(a) as being unpatentable over Allen in view of Mizutani et al. (U.S. Patent Application No: 2002/0028624, hereinafter "Mizutani") is respectfully traversed.

Mizutani fails to overcome the deficiencies of Allen. Neither Allen nor Mizutani, alone or in combination, disclose or suggest a continuous mesh liner or continuous liquid-permeable liner, separate and distinct from a body side liner, that is permeable to sand and attached to a composite structure adjacent to the body side liner.

For at least the reasons presented above, Applicants respectfully submit that Claims 5, 30, and 38 are not unpatentable over Allen in view of Mizutani. Thus, Applicants respectfully request withdrawal of this rejection.

**C. Allen**

The rejection of Claims 13 and 24 under 35 U.S.C. §103(a) as being unpatentable over Allen is respectfully traversed.

As explained above, Allen fails to disclose or suggest Applicants' claimed invention. More particularly, Allen fails to disclose or suggest a continuous mesh liner or continuous liquid-permeable liner, separate and distinct from a body side liner, that is permeable to sand and attached to a composite structure adjacent to the body side liner.

For at least the reasons presented above, Applicants respectfully submit that Claims 13 and 24 are not unpatentable over Allen. Thus, Applicants respectfully request withdrawal of this rejection.

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**Conclusion**

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Respectfully submitted,



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